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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability MDL NO. 15-02641-PHX-DGC
Litigation

This Document Relates to:

LYNN BROWN,

Plaintiff,

Case No. 2:18-CV-00018-DGC

v.

C. R. BARD, INC., a New Jersey
Corporation; AND BARD PERIPHERAL
VASCULAR INC., an Arizona
Corporation,

Defendants.

**DEFENDANTS' RENEWED MOTION
TO DISMISS PLAINTIFF'S
COMPLAINT FOR FAILURE TO
COMPLY WITH AMENDED CASE
MANAGEMENT ORDER NO. 5**

Pursuant to Fed. R. Civ. P. 12(b), Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“Bard”) respectfully move this Court to dismiss Plaintiff Lynn Brown’s Complaint for failure to comply with the terms of Amended Case Management Order No. 5 pertaining to timely service of Plaintiff Profile Forms (“PPF”), as well as the Court’s August 7, 2019 Order requiring service of Plaintiff’s PPF by August 22, 2019, as follows:

I. PROCEDURAL HISTORY

On January 3, 2018, Plaintiff filed a Short Form Complaint in MDL 2641, *In Re: Bard IVC Filters Products Liability Litigation*, and subsequently served Bard with a copy of the Summons and Complaint on February 14, 2018. Two years earlier, on March 3, 2016, this Court entered Amended Case Management Order No. 5 [Doc. 927] (the “Order”) which provided, in part:

In cases that have been filed in, removed to or transferred to this MDL on or after the date of this Order, each plaintiff shall submit a completed PPF to defendants within 60 days of filing the complaint.

Id. at 1. The Order further made clear that:

If a plaintiff does not submit a PPF within the time specified in this Order, defendants shall mail an overdue letter by e-mail and U.S. mail to Plaintiffs’ Co-Lead Counsel and the plaintiffs’ individual representative counsel, stating that defendants may move to dismiss that plaintiff’s case within 20 days of receipt of the letter. If no PPF is received within those 20 additional days, defendants may move immediately to dismiss that plaintiff’s case.

Id. at 2.

On June 19, 2019, Bard filed a Motion to Dismiss Plaintiff’s complaint for failure to serve a PPF in compliance with Amended Case Management Order No. 5. [Doc. 18557]. The following month, on August 7, 2019, the Court entered an order declining to dismiss Plaintiff’s complaint, but holding that Bard could renew its Motion to Dismiss if Plaintiff failed to serve a PPF by August 22, 2019. [Doc. 19874]. Despite the Court’s clear mandate, Plaintiff has not served a PPF to date. This motion follows.

II. ARGUMENT AND CITATION TO AUTHORITY

The Court should dismiss Plaintiff's complaint because she has failed to serve a PPF in this case, despite the Court's provision of ample opportunity to comply with its directives regarding the same.

Indeed, Plaintiff has failed to comply with each of the Court's Orders governing her conduct in this case with regard to service of a PPF. First, Plaintiff failed to comply with Amended Case Management Order No. 5, which generally governs the timely service of PPFs, by failing to serve a PPF in this case within the time frame prescribed in that Order. When Bard brought Plaintiff's non-compliance with Amended Case Management Order No. 5 to the Court's attention, instead of dismissing Plaintiff's, the Court entered a second Order on August 7, 2019. [Doc. 19874]. This second Order specifically directed Plaintiff to serve her already overdue PPF by August 22, 2019, or face dismissal of her case. Plaintiff also failed to comply with the Court's second Order and, to date, has not served a PPF in this case. Accordingly, Plaintiff's Complaint is subject to dismissal pursuant to the terms of both Amended Case Management Order No. 5 [Doc. 927] and the Court's August 7, 2019 Order [Doc. 19874].

WHEREFORE, Bard respectfully requests that this Court enter an Order dismissing Plaintiff's Complaint for the foregoing reasons. For the Court's convenience, a proposed order is attached as Exhibit A.

This 8th day of October 2019.

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**Attorney for Defendants C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 8, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

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